

UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA

In Re: Pork Antitrust Litigation ) File No. 18-cv-1776  
) (JRT-JFD)  
)  
)  
) St. Paul, Minnesota  
) November 4, 2022  
) 10:00 a.m.  
)  
)  
)

BEFORE THE HONORABLE JOHN F. DOCHERTY  
UNITED STATES DISTRICT COURT MAGISTRATE JUDGE

(MOTION HEARING VIA ZOOM)

Proceedings recorded by mechanical stenography;  
transcript produced by computer.

1 **APPEARANCES VIA ZOOM:**

2 **For Direct Purchaser Plaintiffs:**

3 Lockridge, Grindal, Nauen, PLLP  
4 BRIAN D. CLARK, ESQ.  
5 JOSEPH BRUCKNER, ESQ.  
6 JOSEPH C. BOURNE, ESQ.  
7 Suite 2200  
8 100 Washington Avenue South  
9 Minneapolis, Minnesota 55401

7 Pearson, Simon & Warshaw, LLP  
8 JILL M. MANNING, ESQ.  
9 555 Montgomery Street  
Suite 1205  
San Francisco, California 94111

10 **For the Consumer Indirect Purchaser Plaintiffs:**

11 Gustafson Gluek, PLLC  
12 DANIEL NORDIN, ESQ.  
13 Suite 2600  
120 South Sixth Street  
Minneapolis, Minnesota 55402

14 Hagens, Berman, Sobol, Shapiro, LLP  
15 ABBY WOLF, ESQ.  
16 1301 Second Avenue  
Suite 2000  
Seattle, Washington 98101

17 **For the Commercial and Institutional Indirect Purchaser  
18 Plaintiffs:**

19 Cuneo, Gilbert & LaDuca, LLP  
20 A. BLAINE FINLEY, ESQ.  
21 Suite 2200  
4725 Wisconsin Avenue NW  
Washington, DC 20016

22 **For the MDL Direct Action Plaintiffs:**

23 Kaplan, Fox & Kilsheimer, LLP  
24 MATTHEW P. MCCAHILL, ESQ.  
25 850 Third Avenue  
14th Floor  
New York, New York 10022

1                   **For Defendant Tyson Foods:**

2                   Axinn, Veltrop & Harkrider, LLP  
3                   TIFFANY RIDER ROHRBAUGH, ESQ.  
4                   1901 L Street NW  
5                   Washington, DC 20036

6                   Axinn, Veltrop & Harkrider, LLP  
7                   JAROD TAYLOR, ESQ.  
8                   90 State House Square  
9                   Hartford, Connecticut 06103

10                   **Court Reporter:**

11                   ERIN D. DROST, RMR-CRR  
12                   Suite 146  
13                   316 North Robert Street  
14                   St. Paul, Minnesota 55101

15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

## PROCEEDINGS

**IN OPEN COURT**

(Via Zoom)

4 THE COURT: Good morning, everyone. My name is  
5 John Docherty. I'm the U.S. Magistrate Judge assigned to  
6 this case. This is the In Re: Pork Antitrust Litigation  
7 MDL. The case number is 18-cv-1776.

8                   We are here this morning for oral argument on the  
9                   plaintiffs' motion that I issue letters rogatory to the  
10                   Court in Canada to allow the taking of the deposition of an  
11                   employee named Sumio Matsumoto.

12 I have read the submissions of the parties. They  
13 were informative, and I thank you for them. I think that  
14 will help us guide the argument this morning.

23 MR. BOURNE: Thank you, Your Honor. Joe Bourne  
24 here for the direct purchaser plaintiffs from Lockridge  
25 Grindal Nauen and also speaking on behalf of all plaintiffs.

1                   We don't know exactly how long it will take. My  
2 guess would be, based on the information we've seen, it  
3 could be six months. I think it's important to note that  
4 extending the fact discovery deadline to allow this  
5 deposition to occur would not impact the schedule in any  
6 other manner. Class certification is set to be heard in  
7 late January. We're going to be speaking with the Court  
8 in -- later this month about deadlines for merits expert  
9 discovery and dispositive motion briefing.

10                  We would anticipate that those would be -- we  
11 haven't finished our meet and confer, but I don't expect the  
12 merits expert reports to occur any less than six months from  
13 now, and summary judgment, of course, would be some several  
14 months after that would be my expectation. Of course that  
15 will be something we'll be discussing with the Court in a  
16 couple of weeks.

17                  THE COURT: Mr. Bourne, I mean, this is your case,  
18 and you know it very well, I'm sure. But if you're going to  
19 be having expert -- proceedings regarding expert witnesses  
20 in the spring and this letter rogatory might take six  
21 months, at least in my experience, experts like to give  
22 their opinion on the basis of a fully-developed fact  
23 discovery record. Is that going to be a problem here?

24                  MR. BOURNE: Your Honor, I don't anticipate that  
25 it will be a problem. The parties haven't -- we're still

1       waiting to hear from the defendants on their view of when  
2       merits expert discovery should occur or if it should occur.  
3       So it's hard to say right now. But I don't anticipate that  
4       it will be a problem. The plaintiffs, as the party with the  
5       burden of persuasion, will be prepared to submit their  
6       merits expert reports.

7               As to timeliness, Tyson relies heavily on two  
8       cases in its papers, and those cases are both very different  
9       than the circumstances here; the *Cardiovascular Systems*  
10      opinion that Judge Menendez wrote, and the *Bombardier*  
11      *Recreational Products* opinion from Judge Brisbois.

12               In both of those cases, fact discovery had closed  
13       before the motion for a letter rogatory was filed. In  
14      *Cardiovascular Systems*, the Court noted that a significant  
15       amendment of the scheduling order would be required because  
16       both discovery had closed and the case was on the eve of  
17       summary judgment with a hearing date already in place.

18               In *Bombardier Products*, discovery had, one,  
19       closed, including multiple extensions specifically to  
20       complete only identified depositions, and yet the parties  
21       seeking the depositions there ignored that and waited on the  
22       foreign depositions. There, the witnesses were disclosed in  
23       the initial disclosures, unlike here. Those were also  
24       breach of contract and patent cases which involved far fewer  
25       documents and potential deponents than an antitrust

1                   conspiracy case such as this one.

2                   THE COURT: I take your point that in the  
3                   *Bombardier* and the cardiac case, the parties didn't move for  
4                   the letters rogatory until fact discovery had closed. You  
5                   did get in I think I can say under the wire without it being  
6                   a stretch.

7                   Tell me about good cause here, though. I mean,  
8                   you're going to not only be asking for letters rogatory,  
9                   you're also asking for an amendment to the scheduling order  
10                   and that does require good cause. So what is the good cause  
11                   for extending the scheduling order to accommodate this  
12                   deposition?

13                   MR. BOURNE: Good cause focuses on the diligence  
14                   of the plaintiffs and also considers any prejudice to the  
15                   party opposing the motion. There's no prejudice to Tyson  
16                   here. I think the diligence of the plaintiffs in conducting  
17                   discovery is likely to be the central consideration per the  
18                   Court.

19                   Tyson produced over a million documents. The  
20                   defendants and certain third parties have produced over  
21                   3.8 million documents. Tyson produced a large chunk of  
22                   those documents by the substantial completion deadline in  
23                   September 2021, although it continued to produce documents  
24                   until very recently on a rolling basis. Those remaining  
25                   productions were smaller, but they still appeared.

1                   It takes a long time to review 3.8 million  
2 documents. The plaintiffs have taken approximately 87  
3 depositions. We were allotted ten per defendant,  
4 including -- and for Tyson, we're seeking Mr. Matsumoto as  
5 the tenth. It takes time to work through millions of  
6 documents and dozens of depositions.

7                   THE COURT: Before you go on, let me ask you about  
8 the -- about the timing -- the timing of document production  
9 specifically. I mean, you say these are rolling  
10 productions. You got some documents only just before  
11 depositions. But is it not correct that those documents  
12 were produced because certain other plaintiffs had joined  
13 the case; in other words, that the document production  
14 requests that were specific to the plaintiffs who were in  
15 the case when this came up had been completed?

16                   MR. BOURNE: The direct action plaintiffs were in  
17 the case during the discovery period, Your Honor. It is  
18 true that the requests for which the most recent productions  
19 occurred were responsive to requests by those direct action  
20 plaintiffs, and they did enter the case later than the class  
21 plaintiffs. But, you know, they were participating in  
22 discovery during that timeframe.

23                   THE COURT: So were there then document requests  
24 for those direct action plaintiffs? Let me ask it a  
25 different way: Were the documents that came in relatively

1                   shortly before the depositions, were those direct action  
2                   plaintiff documents or were those documents for the balance  
3                   of the case?

4                   MR. BOURNE: Your Honor, my understanding is that  
5                   they were responsive to the negotiations with the direct  
6                   action plaintiffs; however, they weren't specific to the  
7                   direct action plaintiffs. It wasn't as simple as produce  
8                   your e-mails with direct action plaintiff US Foods, for  
9                   example. They sought substantive liability evidence that  
10                   was generally applicable to all plaintiffs for all of their  
11                   cases against the defendants, and that is part of why there  
12                   were substantial meet and confer efforts between the  
13                   defendants and the direct action plaintiffs and part of why  
14                   it took so long to get those additional documents.

15                   THE COURT: And I take your point. But I think my  
16                   point, when you are talking about good cause, is it sounds  
17                   to me like on the landscape as it existed when this issue  
18                   came up regarding Mr. Matsumoto, Tyson had done what it was  
19                   required to do. The extra documents that you place some  
20                   emphasis on in your motion papers were not documents that  
21                   you had asked for, in other words.

22                   MR. BOURNE: The direct action plaintiffs aren't  
23                   parties to this motion, however, I agree with the synopsis  
24                   that Your Honor just articulated. And I think it's  
25                   important to note that the bulk of Tyson's million-plus

1 documents, yes, they were produced by September 2021.

2 That's still a million documents, that's three-plus million  
3 documents from the defendants. We can't immediately review  
4 those and determine which are the people that need to be  
5 deposed. It takes time to work through that.

6 And --

7 THE COURT: Okay. So why then -- that's a good  
8 opening. Why then do you -- are you so eager to take the  
9 deposition of Mr. Matsumoto? I know that Ms. McConnell had  
10 things to say about him. But the defendants point out that  
11 Mr. Matsumoto's supervisors are also in this case; and, in  
12 fact, I think, correct me if I'm wrong, but Mr. Krehbiel  
13 should have been deposed yesterday and Mr. Andriessen the  
14 day before yesterday. I believe they are both supervisors  
15 of Mr. Matsumoto. Did anything come out of those  
16 depositions that changes this motion hearing this morning?

17 MR. BOURNE: Your Honor, the -- pursuant to the  
18 request of one of those witnesses, Jay Krehbiel, that  
19 deposition is now going to occur on November 16th.

20 THE COURT: Okay.

21 MR. BOURNE: Mr. Andriessen was deposed two days  
22 ago on November 2nd. And I believe that that deposition  
23 shed further light on the importance of the deposition of  
24 Mr. Matsumoto.

25 THE COURT: Could you expand on that, please?

1 MR. BOURNE: Yes, Your Honor. There are two areas  
2 in which we believe that Mr. Matsumoto has important unique  
3 additional evidence based on his own personal knowledge and  
4 direct involvement. One is identifying competitors in Agri  
5 Stats reports, the other is export sales of pork out of the  
6 United States to Japan and Asia.

12 | That is an important issue in the case.

13 Mr. Matsumoto had information about defendant JBS visiting a  
14 customer in Japan. And Mr. Matsumoto told other employees  
15 of Tyson not to mention that they knew about the visit.  
16 Mr. Andriessen speculated that Mr. Matsumoto got the  
17 information from the customer, but he doesn't know because  
18 he didn't ask Mr. Matsumoto. Mr. Matsumoto is the one who  
19 knows.

20 I also think it's worth noting, Your Honor, that  
21 on October 12th, the day before the plaintiffs filed this  
22 motion, a deposition of a Seaboard witness, Duke Sand,  
23 occurred in which Seaboard terminated the deposition so that  
24 the witness could obtain independent counsel and consider  
25 whether to invoke the Fifth Amendment for questions related

1 to communications with competitors about export sales and  
2 pricing to Japan.

3 THE COURT: Okay. Who was that again?

4 MR. BOURNE: Duke Sand of Seaboard.

5 THE COURT: Okay.

6 MR. BOURNE: And the issue there --

7 THE COURT: Forgive me for having to ask. Is  
8 Seaboard a Tyson subsidiary?

9 MR. BOURNE: No, Your Honor. It's one of Tyson's  
10 competitors and co-defendants in this case.

11 THE COURT: Okay.

12 MR. BOURNE: But the subject matter there, export  
13 sales to Japan and communications with competitors in which  
14 he might invoke the Fifth Amendment at the remainder of his  
15 deposition, is one for which Mr. Matsumoto had authority and  
16 was the person at Tyson according to the other -- the other  
17 testimony of Tyson individuals.

18 THE COURT: Okay. And you also -- besides export  
19 sales of hogs to Asia, you also want to talk with  
20 Mr. Matsumoto about decoding the Agri Stats data; correct?  
21 I have to observe, I see some tension between your complaint  
22 and your motion papers here. The complaint -- at least I  
23 took away from it that Agri Stats was fairly transparent  
24 that this was the way that the competitors communicated with  
25 each other and maintained their price-fixing conspiracy.

1       But now it sounds as though decoding Agri Stats is really a  
2       job for the National Security Agency and you need to go see  
3       Mr. Matsumoto in Japan to figure it all out. Is there some  
4       tension there between the difficulty of Agri Stats in the  
5       complaint versus the difficulty of decoding Agri Stats in  
6       the papers that you submitted in support of this motion?

7                    MR. BOURNE: I don't believe there's tension  
8       necessarily. As discovery has occurred, of course we've  
9       learned more about how the deanonymization process works.  
10       What we believe the evidentiary record now supports is that,  
11       yes, the defendants did monitor their conspiracy, in part,  
12       through decoding the information in the Agri Stats reports.

13                   And what we know is that the other Tyson employees  
14       have, you know, said they don't know what Mr. Matsumoto  
15       knew, how he knew it, or how he contributed. Ms. McConnell  
16       testified that Mr. Matsumoto provided information that was  
17       important to her in that process, but she couldn't -- other  
18       than saying it was based on his knowledge and his contacts  
19       and his history in the industry, she couldn't specify, you  
20       know, how he provided the information that she used to  
21       attempt to deanonymize the Agri Stats reports, and,  
22       therefore, we believe it's important to Mr. Matsumoto to  
23       find out did you talk to competitors. Where did you get the  
24       information that you provided? How did you get the  
25       information you provided?

1                   I also think it's really important to note,  
2 Your Honor, this is a discovery motion. The question --  
3 setting aside the timeliness issue where the plaintiffs need  
4 to show good cause, we only need to show that this will  
5 further discovery, and then Tyson needs to show that there's  
6 good cause not to take the deposition under the prevailing  
7 standard.

8                   What Tyson is really trying to do is to have an  
9 early adjudication of summary judgment, who has the better  
10 evidence on whether these Agri Stats reports were used to  
11 identify competitors, whether that mattered. And that's  
12 simply inappropriate for a discovery motion in the  
13 plaintiffs' view.

14                  THE COURT: Okay. All right. Those are all the  
15 questions I have, but is there more that you think it's  
16 important for me to keep in mind as I make my decision?

17                  MR. BOURNE: Your Honor, I believe that addresses  
18 the key points that I was planning to discuss as well. I  
19 would request the right to respond to argument by Ms. Strang  
20 Aberg.

21                  THE COURT: Yeah, I'll give you a few minutes  
22 after Ms. Strang Aberg has spoken. It will be limited, of  
23 course, to the points that she makes, and I won't let you  
24 introduce any new material, okay?

25                  MR. BOURNE: Thank you.

4 MS. STRANG ABERG: You can just say Aberg.

5 THE COURT: Aberg, so I'm -- not even Aberg.  
6 Aberg, okay.

7 All right. You know, looking at this, it does  
8 seem that Tyson is very anxious not to have Mr. Matsumoto's  
9 deposition taken, and this causes a little bit of a raised  
10 eyebrow on my part. I hear all the things you're saying  
11 about timeliness, but, really, Mr. Matsumoto's deposition  
12 could be taken on Monday if Tyson would tell him it's part  
13 of his job to have this deposition taken.

14 MS. STRANG ABERG: Yes, Your Honor, so here's how  
15 I would respond to that. I mean, first, this is a unique  
16 situation. Mr. Matsumoto is distinguishable from the many  
17 other witnesses that Tyson has already made available for  
18 deposition. They have all been U.S. residents, and most of  
19 them have been officers or directors of Tyson such that they  
20 are subject to deposition by notice, whereas, Mr. Matsumoto  
21 is a lower-level employee and is not.

22 Mr. Matsumoto also is not willing to testify, and,  
23 put simply, Tyson is not obligated to do more than the law  
24 requires to help plaintiffs sue us, essentially. And  
25 plaintiffs seem to want to imply that there's something

1                   untoward about Tyson not using the threat of termination to  
2                   force this, but really what this comes down to is this  
3                   person is a lower-level employee. We don't plan to rely on  
4                   his testimony, and we don't think we need it. We don't  
5                   think it's essential to the case. And we don't want to  
6                   force him to give up his legal rights. They are perfectly  
7                   able to pursue his testimony, you know, in accordance with  
8                   the law, but we don't believe that we should have to  
9                   intervene on their behalf to force him to do something he  
10                   doesn't want to do.

11                   THE COURT: And I would accept all of that were it  
12                   not that you are also saying this will delay things for 6 to  
13                   12 months. You cite a treatise on international discovery  
14                   for that proposition. And, yes, you are entitled to compel  
15                   the plaintiffs to follow the law and get letters rogatory  
16                   and go to Canada and depose Mr. Matsumoto if it comes to  
17                   that, but I don't think that you can simultaneously say, Oh,  
18                   this will take a very long time, and, therefore, that's one  
19                   reason why it ought to be denied.

20                   MS. STRANG ABERG: Your Honor, I understand that  
21                   tension and that counterpoint to our argument of course. I  
22                   will say also to the plaintiffs' point that there is no  
23                   prejudice to Tyson to making Mr. Matsumoto available, we  
24                   disagree with that as well. Mr. Matsumoto is Japanese.  
25                   He's a non-native and non-fluent English speaker. His

1 deposition will be considerably more time-consuming,  
2 expensive, onerous, and risky frankly for Tyson as compared  
3 to other deponents simply because of that language barrier.  
4 He has an imperfect command of the English language which is  
5 apparent on the face of the documents that have been used in  
6 this case. And, accordingly, we will definitely need an  
7 interpreter both for prep and for the deposition which will  
8 delay things.

9 And, in addition, you know, I think as we all know  
10 as attorneys, sitting for a deposition is a really difficult  
11 exercise even for native English speakers. We have seen in  
12 this case that plaintiffs' strategy in these depositions is  
13 to try to get deponents to confirm plaintiffs' desired  
14 interpretations and inferences from ambiguously worded  
15 e-mail communications. The type of close reading,  
16 listening, and explanation that's going to be needed to  
17 respond to these types of questions is difficult enough for  
18 our English speakers. It's going to be much, much more  
19 difficult for a non-native English speaker. So we're really  
20 concerned about that, and that's the prejudice.

21 THE COURT: The other question that I had  
22 concerning your motion papers was it seemed to be that  
23 Mr. Matsumoto's -- your argument seemed to be that  
24 Mr. Matsumoto's testimony was not relevant because the  
25 plaintiffs' entire theory of the case was wrong because

1       actually Agri Stats couldn't be used to communicate among  
2       the members of the price-fixing conspiracy. That, though, I  
3       mean, to Mr. Bourne's point, does seem to be more summary  
4       judgment and less discovery, because if you're right about  
5       that, then this whole case, I mean every witness who's been  
6       questioned about Agri Stats has been giving irrelevant  
7       testimony.

8               But, I mean, at this point, this case has survived  
9       a couple of, you know, robust motions to dismiss, and it is  
10       the theory of the case that there was a price-fixing  
11       conspiracy, it was operated through a communication channel  
12       of Agri Stats. So I understand you don't agree with that,  
13       but if that's the theory of the case, how can  
14       Mr. Matsumoto's testimony not be relevant?

15               MS. STRANG ABERG: I think setting aside whether  
16       it's plausible or not that Agri Stats could have been used  
17       in the manner alleged, which I will grant that we did  
18       include some argument in our briefing of course on that  
19       issue, but even setting aside whether that is the case, I  
20       think plaintiffs have all they need. I think that there is  
21       no dispute, and the record is very clear that Debbie  
22       McConnell at Agri Stats was the Agri Stats person at Tyson.  
23       I don't think that any of the testimony that's been elicited  
24       in this case in any way contradicts that or suggests that  
25       Mr. Matsumoto was somehow, you know, her second in command

1 or her right-hand man on that front also analyzing the  
2 reports. In fact, the only document that plaintiffs cite in  
3 their brief as support for this argument that Mr. Matsumoto  
4 was essential to helping Ms. McConnell in this effort is an  
5 e-mail where she e-mails four different people at Tyson  
6 asking all of them, including Mr. Matsumoto, for some input  
7 into the -- how she's guessing who was who. So he's just  
8 one of many.

9 And I also don't agree that either Ms. McConnell,  
10 Mr. Andriessen, or anyone else who was asked about  
11 Mr. Matsumoto's role at deposition, you know, broadly  
12 disclaimed any knowledge of what he was doing or where he  
13 got his information.

14 I would definitely take issue with the  
15 characterization from Mr. Bourne that at the deposition of  
16 Mr. Andriessen this week, that he testified that he doesn't  
17 know where Mr. Matsumoto got his information. That's not  
18 accurate. He testified repeatedly that he understood  
19 Mr. Matsumoto had a lot of connections with customers in  
20 Japan and that those customers told him information about  
21 his competitors, not direct competitor communication.

22 THE COURT: Isn't this the plaintiffs' decision to  
23 make? They look at the deposition transcript, you look at  
24 the deposition transcript, both of you use that deposition  
25 transcript as one input into an evolving litigation

1 strategy. And if they look at Ms. McConnell's deposition  
2 and say, I think we want to go and talk to Mr. Matsumoto,  
3 don't they get to make that decision? I mean, I'm not  
4 talking about this motion. But if they, in your view, want  
5 to waste one of their ten depositions on Mr. Matsumoto,  
6 that's their lookout, isn't it?

7 MS. STRANG ABERG: Your Honor, definitely. I  
8 absolutely agree with that. The tension here though is the  
9 requirement to show good cause. They cannot get this  
10 deposition done within the timeframe allotted to them, and  
11 they have had a lot of time. And as far as the document  
12 productions go, I think that's been really misconstrued.  
13 The documents that they rest this motion on, the documents  
14 establishing that Mr. Matsumoto talked to Debbie McConnell  
15 about Agri Stats and also had communications with people  
16 within Tyson about exports, those have been in the discovery  
17 record for 18 months or more. They are not -- none of the  
18 docs they are citing in their brief are from these recent  
19 productions that they point out, and so it's just a side  
20 show. It's not relevant.

21 So they had access to these materials. They  
22 elected to wait over a year after receiving all of Debbie's  
23 documents before deposing Debbie, and even then, they  
24 deposed her in June and waited two and a half more months  
25 before raising Mr. Matsumoto's name. So it's just delay

1 after delay.

15 MS. STRANG ABERG: I don't think that's fair to  
16 say. As Mr. Bourne stated, it's still very much in flex and  
17 to be determined what the schedule will be. Direct action  
18 plaintiffs, for example, I think want to get moving with  
19 expert discovery and have proposed a schedule that -- or at  
20 least initially proposed a schedule that would have expert  
21 reports being filed certainly prior to six months from now.  
22 We don't exactly know what the timing will be, but I don't  
23 think it's at all a safe assumption that it will not -- that  
24 this deposition being taken pursuant to the Canadian Court's  
25 process will not interfere.

1                   And also of course there's no commitment that it  
2 takes six months. As Your Honor knows, I'm sure full well,  
3 you can't accurately predict how long something is going to  
4 take in a court, in particular, in a foreign court.

5                   Mr. Bourne said they estimate around six months. It could  
6 be longer than that, surely.

7                   THE COURT: Okay. All right. You've answered all  
8 my questions, but what else do you want to tell me before I  
9 make up my mind?

10                  MS. STRANG ABERG: I think I would like to just  
11 address a few of the points that Mr. Bourne raised that we  
12 haven't discussed yet. I think, one, this point about  
13 Seaboard and the deposition of a Seaboard CEO being cut  
14 short by Seaboard's attorney because of apparent -- or based  
15 on questioning on a document that showed communications  
16 between Seaboard and its competitors, it was a communication  
17 between Seaboard and one competitor, not Tyson. Plaintiffs  
18 have not suggested anything that would -- or put forward any  
19 documents or any testimony that would suggest that  
20 Mr. Matsumoto even knows Duke Sand or the other person at  
21 the competitor -- non-Tyson competitor that Duke Sand was  
22 allegedly talking to about this sensitive information. And  
23 so it's just got no connection whatsoever to Mr. Matsumoto  
24 except for the fact that Mr. Matsumoto is Japanese and sells  
25 pork to Japan. So I don't think there's any indication

1                   whatsoever that that makes the motion any stronger.

2                   And then I think just also to the point that no  
3                   one can say but Mr. Matsumoto who Mr. Matsumoto's sources  
4                   were for the information he had about competitors, the  
5                   document that plaintiffs cite in their motion on that point,  
6                   it does not support any reading that he was getting this  
7                   information from Smithfield directly.

8                   The document on its plain face references that  
9                   this is rumors about what Smithfield may do. And so it's  
10                  just not consistent with the notion that he was getting the  
11                  information from Smithfield directly. And it, I don't  
12                  think, supports the contention that there's -- you know,  
13                  that he's got sketchy competitor communications that he  
14                  needs to answer for.

15                  THE COURT: Okay. All right. Thank very much.

16                  MS. STRANG ABERG: Yeah.

17                  THE COURT: I appreciate it.

18                  Mr. Bourne, is it correct that that document that  
19                  this motion is premised upon was in your custody for  
20                  18 months before this motion was made?

21                  MR. BOURNE: Your Honor, I have -- I'm not  
22                  certain, frankly. I can't -- won't dispute it. I'm sure  
23                  that Ms. Aberg is truthfully representing the timing of when  
24                  that document was produced, although, again, I think it's  
25                  important to note they've produced a lot of documents. The

1       plaintiffs can't be expected to instantly know what all of  
2       them say.

3                   I also think it's important to note that part of  
4       our strategy in determining who to depose has to be you see  
5       how the depositions go. We deposed Ms. McConnell first or  
6       second among Tyson because we anticipated that she had  
7       important information about identifying competitors in Agri  
8       Stats reports. We then deposed, you know, a handful of  
9       other people, each time evaluating who makes sense, who do  
10      we need, who can fill, not gaps necessarily, but who can  
11      provide additional information we think will be important.  
12                   It took time to work through that process, and we eventually  
13      identified Mr. Matsumoto.

14                   We also --

15                   THE COURT: Well, I'll take your second point that  
16       after you've taken a deposition, you need to do some  
17       analysis, but I will not -- I can't accept your first point  
18       about difficulty of analyzing a volume of evidence. There  
19       is a lot of material in this case, but there is a lot of  
20      lawyers in this case. Reading these papers last night, I  
21       mean, half of these submissions are signature pages. And  
22       right now there's 23 attorneys participating in this hearing  
23       and -- while another hearing is going on at the same time in  
24       front of Judge Tunheim. So certainly I believe that the  
25       personnel are here to analyze documents, but I will accept

1       that there's some measure of needing to review a deposition  
2       and then make some decisions, but I keep coming back to the  
3       fact that this is -- I mean, this document where  
4       Ms. McConnell says, Reach out to Mr. Matsumoto and get his  
5       guesses as to who these people are on the Agri Stats  
6       reports, if you've had that for 18 months, it's a concern.

7                    MR. BOURNE: Your Honor, I do believe we've had  
8       that for 18 months.

9                    The other point that I wanted to address briefly  
10       that Ms. Aberg raised is the fact that Tyson's other  
11       witnesses were subject to deposition by notice and not  
12       Mr. Matsumoto because he's a lower-level employee. Every --  
13       Tyson's other witnesses include former employees and current  
14       employees. Every witness for every defendant in this case,  
15       80 some depositions or 70 something, I think, every single  
16       one has been deposed by notice without need for subpoena,  
17       including former employees who theoretically would require a  
18       subpoena, because that has been the parties' practice in the  
19       case with one exception, Josh Edwards of Agri Stats, who  
20       Agri Stats did not know how to contact.

21                   So we reasonably anticipated that Mr. Matsumoto  
22       would also -- you know, we would ask Tyson to take his  
23       deposition, which we did at the start of September, two  
24       months before the close of fact discovery, and we  
25       anticipated that they would make him available by Zoom like

1 they and all the other defendants have done throughout the  
2 last year and a half of depositions.

3 THE COURT: All right. Thank you both. Let's  
4 take a couple of minutes for me to review some notes. And  
5 then I will come back out and, if possible, I'll give you a  
6 decision. Okay. Stand by.

7 (Recess taken at 10:35 a.m.)

\* \* \* \*

9 (10:39 a.m.)

**IN OPEN COURT**

12 THE COURT: All right. Let's resume.

13 Ms. Drost, are you ready to go?

14 THE COURT REPORTER: (Nods head.)

15 THE COURT: Okay. Plaintiffs' motion for letters  
16 rogatory will be granted. I'm not planning on issuing a  
17 written order on this, and so the transcript of what I'm  
18 about to say will be the Court's order on this point.

1                   Mr. Matsumoto's involvement in the sale of hogs to Asian  
2                   customers, that Mr. Matsumoto does, in fact, have relevant  
3                   and discoverable information.

4                   The more, I won't say challenging, but the piece  
5                   of this that takes a bit more analysis is good cause. This  
6                   is a very large and very complicated case; but as I pointed  
7                   out during the oral argument, it's also a very well-staffed  
8                   case. However, it is true, of course, that both parties are  
9                   constantly evaluating what their next decision in terms of  
10                   this litigation ought to be, and I absolutely accept  
11                   plaintiffs' representation that following the deposition of  
12                   Ms. McConnell, they made the decision to seek to depose  
13                   Mr. Matsumoto.

14                   I believe that the plaintiffs have acted  
15                   diligently. I also believe part of what factors into that  
16                   is Mr. Bourne's representation that this was -- the  
17                   requirement that Mr. Matsumoto be deposed pursuant to  
18                   letters rogatory was a departure from the practice of the  
19                   parties in this particular litigation.

20                   So because Mr. Matsumoto has relevant and  
21                   discoverable information, because there's good cause for a  
22                   very limited amendment of the pretrial scheduling order, the  
23                   letters rogatory will issue.

24                   I do want to make clear that the modification of  
25                   the pretrial scheduling order is just for the deposition of

1 Sumio Matsumoto pursuant to letters rogatory in Canada. So  
2 that is that.

3 I believe the next step, though, Mr. Bourne, in  
4 terms of letters rogatory, is I need an actual physical  
5 document that can be sealed and signed and so forth. And  
6 I'll put it on you to research all of those requirements and  
7 get me what it is that I need.

I'm also going to ask you -- and I know you have the resources -- to be very sure of Canadian law and, to the extent it is relevant in a situation like this, the law of the province in which Mr. Matsumoto is located. I am concerned about timing. And I certainly don't want this to be sent back by the Canadian authorities for a do-over because it wasn't done right the first time.

15 So that is the ruling of the Court. Mr. Bourne,  
16 do you have any requests for clarification concerning the  
17 ruling I've just made?

18 MR. BOURNE: No, Your Honor. We will make sure to  
19 get you the materials correctly as soon as possible, and we  
20 are partnering with counsel in British Columbia to make sure  
21 we follow the law correctly.

THE COURT: Good. Glad to hear that.

23 Ms. Aberg, any requests for clarification  
24 concerning the Court's ruling?

25 MS. STRANG ABERG: No, Your Honor. Thank you.

1                   THE COURT: All right. Thank you all. Have a  
2 good weekend. I'm sure we'll be talking again as this case  
3 goes forward. Take care. Court is adjourned.

4                   (Court adjourned at 10:44 a.m.)

5                   \*           \*           \*

6  
7  
8                   I, Erin D. Drost, certify that the foregoing is a  
9 correct transcript from the record of proceedings in the  
10 above-entitled matter to the best of my ability.

11  
12                   Certified by: s/ Erin D. Drost

13                   Erin D. Drost, RMR-CRR  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25